

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	NO. 1-14-CR-007-P
	§	
TROY E. POWELL	§	

**DEFENDANT’S MOTION TO DISMISS THE INDICTMENT AS IT IS BASED ON A
STATUTE THAT IS INVALID UNDER THE ADMINISTRATIVE PROCEDURE ACT**

Note: The Defendant concedes that this Motion’s requested relief is contrary to current Fifth Circuit law, but the Defendant seeks to preserve the issue for further review, either with the Fifth Circuit *en banc*, or with the Supreme Court. *See United States v. Johnson*, 632 F.3d 912, 930-33 (5th Cir. 2011), *cert. denied*, 132 S. Ct. 135 (2011).

NOW COMES Defendant, Troy E. Powell, through undersigned counsel, and respectfully asks this Court to dismiss the indictment against him because the statute on which it is based is invalid under the Administrative Procedure Act.

Defendant is charged under 18 U.S.C. §2250 for Failure to Register under the Sex Offender Registration and Notification Act (“SORNA”) of 2006. 42 U.S.C. §§16901-16929. Defendant was convicted of a “sex offense” in 1992. In order for the Defendant to have committed the offense of Failure to Register, SORNA would have to be applied retroactively to Defendant. Defendant would show that Congress did not make SORNA retroactively applicable to persons convicted of sex offenses before it was enacted. Instead, Congress allowed the Attorney General to determine whether the requirements should be applied retroactively and issued a regulation to that effect. 28 C.F.R. 72.3. This regulation is invalid under the Administrative Procedure Act (“APA”). 5 U.S.C. §500 *et seq.* In promulgating the regulation,

the Attorney General failed to comply with the APA's notice and comment requirements, 5 U.S.C. §553(b), (c), and its provision mandating a 30-day waiting period before a regulation takes effect. 5 U.S.C. §553(d). These failures render the rule invalid.

WHEREFORE, PREMISES CONSIDERED, Defendant asks this Court to dismiss the indictment in this cause and for all other and further relief to which Defendant may be entitled.

Respectfully submitted,

/s/ Jeffrey A. Propst
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CERTIFICATE OF SERVICE

I, Jeffrey A. Propst, certify that on the 7th day of March, 2014, the foregoing was filed through the Electronic Case Filing ("ECF") System pursuant to Local Criminal Rule 49.2(f). Pursuant to Rule 9 of Miscellaneous Order No. 61 and Local Criminal Rule 49.2(e), this constitutes service of this document to the United States Attorney for the Northern District of Texas, who is an ECF user.

/s/ Jeffrey A. Propst
JEFFREY A. PROPST
Attorney for Defendant